UNITED STATES DEPARTMENT OF COMMERCE
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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
|---|---|---|---|
| 09/884,656 | 06/20/01 | DURST | S 1578 |

| EXAMINER | |
|---|---|
| RHEE, J | |
| ART UNIT | PAPER NUMBER |
| 1772 | 3 |

IM52/1010

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DATE MAILED: 10/10/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 09/884,656 | DURST ET AL. | |
| | Examiner | Art Unit | |
| | Jane J Rhee | 1772 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-10* is/are pending in the application.

4a) Of the above claim(s) *1-5* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *6-10* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-5, drawn to a process, classified in class 29.

II. Claims 6-10, drawn to an article, classified in class 428, subclass 54.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the process as claimed can be used to make a different article namely an article without fasteners.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Mr. Jacobs on September 25,2001 a provisional election was made with traverse to prosecute the invention of Group II, claims 6-10. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-5 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one

or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 6-7 rejected under 35 U.S.C. 103(a) as being unpatentable over applicants' admitted prior of art (fig 1) in view of Klein (4,241,457).

The applicants' admitted prior of art discloses a ballistic resistant zone of protection wall comprising a plurality of rows of adjacent abutted sheets of UL listed ballistic fiberglass sheets having a UL listing of any UL Level 1, UL Level 2, or UL Level 3 sequentially (see figure 1). The applicants' admitted prior of art also discloses rows of sheets being fastened together by conventional fasteners through all the rows of ballistic fiberglass (see figure 1). The applicants' admitted prior state of art fails to disclose that the abutment of any two sheets of fiberglass is spaced from the abutment of any two sheets in any other row.

However, Klein teaches that the abutment of any two sheets of ballistic material is spaced from the abutment of any two sheets in any other row (col.3 line 46-49) for the purpose of achieving a higher level of ballistic protection.

It would have been obvious to one of ordinary skill of the art at the time applicant's invention was made to have provided that the abutment of any two sheets of fiberglass in the prior art laminate is spaced from the abutment of any two sheets in any other row in order to achieve higher level of ballistic protection (col.3 line 49-59) because a staggered layer has more ballistic protection due to its difficulty of a bullet penetrating through the seam which is a concurrence in an superimposed layer.

The applicants' admitted state of art fails to disclose UL Levels 4, 5, and 8 comprising a plurality of rows of adjacent abutted sheets of UL listed ballistic fiberglass. One of ordinary skill in the art would have recognized that abutting sequentially a plurality of sheets of a lower level protection ballistic fiberglass, in various combinations of Level 1, Level 2, and Level 3, and staggering the disposition of the plurality of horizontal sheets that the desired level 4, 5, 7, or 8 can be achieved.

The applicants' admitted prior art also discloses that the rows of fiberglass are fastened directly to conventionally spaced studs without the use of battens behind the rearmost row; see figure 2.

It would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided applicant's admitted prior art with rows of fiberglass that are fastened directly to conventionally spaced studs without the use of battens behind the rearmost row since removing unnecessary parts to lighten the weight and decrease cost of shipping and manufacturing yet still obtain the same high level of ballistic protection is well known in the art as shown by figure 2.

7. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicants' admitted prior art in view of Klein as applied to claims 6-7 above, and further in view of Dickson et al (5,851,932).

Applicant's admitted prior art and Klein disclose a ballistic resistant zone of protection wall as described above. Applicant's admitted prior art and Klein fails to teach that the higher level of protection is disposed toward the interior of the protection zone. Dickson teaches that using two different levels of ballistic protection provides an improved ballistic laminate at a lower cost (see col1, line 15-38) for the purpose of providing a higher level of protection.

Therefore, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided with applicant's admitted prior art and Klein the higher level of protection disposed toward the interior of the protection zone in order to have an overall improved ballistic protection at a lower cost as taught by Dickson et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane J Rhee whose telephone number is 703-605-4959. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-5408 for regular communications and 703-301-9999 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

10/9/01

JR
October 9, 2001